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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

FILE: B-202172

DATE: June 9, 1981

MATTER OF: Stout and O'Sullivan

**DIGEST:**

Protest against rejection as nonresponsive of qualified bid in which protester justifies qualification on basis of ambiguities in invitation for bids and inconsistent information received is denied. Bid which does not offer to perform service at firm fixed price required by solicitation is nonresponsive. To extent protest is against improprieties apparent in solicitation, it is untimely and not for consideration because not filed until after bid opening. 4 C.F.R. § 20.2(b)(1) (1980).

Stout and O'Sullivan, Inc., has filed a protest against the rejection of its bid under invitation for bids No. N62472-80-B-4957 issued by the Naval Air Engineering Center, Lakehurst, New Jersey, for the repair of an electrical distribution system. The protest is without merit.

A portion of the work under this invitation for bids involved the relocation of three oil-cooled transformers. There was a chance that the oil in these transformers might be contaminated with PCB, a cancer-causing agent. As a consequence, the contractor would be required to test the oil in each of the transformers for contaminants prior to relocation; if contaminants were found, the contractor was to replace the oil and dispose of the contaminated oil in accordance with Federal and state requirements. The solicitation provided for a single fixed-price bid.

[Protest of Bid Rejection by Navy]

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Stout and O'Sullivan contacted the Naval Air Engineering Center in an effort to learn whether or not PCB's were actually present in the three transformers to be moved, because the cost of disposal would affect its bid. Stout and O'Sullivan's multiple contacts produced only conflicting advice concerning the presence of PCB's. Faced with this uncertainty, Stout and O'Sullivan submitted a bid with a provision that the quotation "is based on existing transformer oil not inhibited [sic] with PCB compounds." The Navy considers the Stout and O'Sullivan bid to be nonresponsive because it is qualified.

Stout and O'Sullivan contends that the rejection of its bid is improper because the form of its bid is justified as a response to the ambiguities in the solicitation and the conflicting advice it received concerning the presence of contaminants. No protest was filed with either our Office or the Navy until after bid opening.

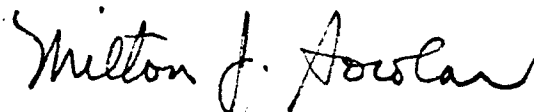
We believe the Navy was correct in rejecting the Stout and O'Sullivan bid. The question regarding the responsiveness of a bid concerns whether a bidder has unequivocally offered to provide the requested items or perform the required service in total conformance with the specifications. Re Con Paving, Inc., B-198294, April 24, 1980, 80-1 CPD 297. The Stout and O'Sullivan bid is not an unequivocal offer to perform the required service at the firm fixed price required by the solicitation. Consequently, the bid was nonresponsive and its rejection was proper. Furthermore, while Stout and O'Sullivan may have been uncertain as to the presence of contaminants in the transformers because of the ambiguities in the solicitation and conflicting oral information, that was a risk which could have been estimated and provided for in arriving at a fixed price. We have upheld the propriety of requiring bidders to estimate the cost of contract compliance and to bear the risks accompanying compliance. Re Con Paving, Inc., supra; Applied Devices Corporation, B-199371, February 4, 1981, 81-1 CPD 65.

Therefore, the uncertainty as to the presence of contaminants does not justify a qualified bid.

To the extent that Stout and O'Sullivan's protest is against the ambiguities and omissions in the solicitation rather than the rejection of its bid, it is untimely. Our Bid Protest Procedures, 4 C.F.R. part 20 (1980), require that protests against improprieties apparent in an invitation for bids be filed prior to bid opening. 4 C.F.R. § 20.2(b)(1) (1980). Since the Stout and O'Sullivan protest was not filed until after bid opening, it is untimely and not for consideration.

As we indicated above, the solicitation placed on bidders the risk that the transformer oil might be contaminated. If Stout and O'Sullivan felt the risk to be unacceptable, they could have either sought a change in the solicitation by protesting prior to bid opening or not bid. They did neither; instead they submitted an indefinite bid in response to a solicitation requiring a single firm fixed price. An indefinite bid submitted in response to a firm fixed price solicitation is non-responsive and must be rejected. Re Con Paving, Inc., supra.

The protest is denied in part and dismissed in part.



Acting Comptroller General  
of the United States